SUPREME COURT OF THE UNITED STATES.

No. 343.

THE STEAMER C. VANDERBILT, HER TACKLE, &c., THE NEW JERSEY STEAM NAVIGATION COMPANY, CLAIMANTS, APPELLANTS,

vs.

ROBERT H. McKIBBEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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a UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to ninety-eight, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Robert H. McKibben, lib'l'nt and appellee, against The St'boat C. Vanderbilt, her tackle, &c., cl'm'ts and appellants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 30th day of Nov., in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-ct. U. S. rev. stamp.]

1 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Thursday, the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Samuel R. Betts, district judge.

ROBERT H. McKIBBEN,
vs.
THE ST'B'T C. VANDERBILT, HER TACKLE, &c. } 18–37.—In admiralty.

The libellant files his libel against the abovenamed steamboat, her tackle, &c., in the words and figures following, to wit:

To the judge of the district court of the United States for the district of New York:

Robert H. McKibben, of the city of Buffalo and State of New York, merchant, exhibits this his libel against the steamboat C. Vanderbilt, whereof George O. Tupper is now or lately was master, her engine, machinery, boats, tackle apparel, and furniture, and against all persons lawfully intervening for their interests therein, in a cause of collision, civil and maritime, and alleges as follows:

First. On the 16th day of May, in the year 1863, and at the time of the collision hereinafter mentioned, your libellant was the owner of the canal boat called the Canisteo, with her apparel and
2 furniture, which said canal boat your libellant used and employed in transporting freight to and fro between the city of New York and divers ports and places upon the Hudson river and the Erie canal, in the State of New York.

Second. In navigating said Hudson river it was customary for said canal boat to be towed up and down said river by a tug-boat propelled by steam.

Third. On the said 16th day of May, and at the time of the said collision, the said canal boat was freighted with a valuable cargo of corn and flour, also the property of your libellant.

Fourth. About six o'clock in the morning of said 16th day of May the steam tug-boat called the O. C. Hubbard took in tow at Troy, on said Hudson river, as well the said canal boat Canisteo freighted as aforesaid, as three other canal boats, all being lashed together, and proceeded to tow them down the river.

Fifth. At a little after six o'clock a. m., whilst the said tug-boat was proceeding cautiously down the river, on the westerly side of the channel thereof, and so much embarrassed by said boats which she had in tow as not to be able to make a greater speed with the current than from four to five knots per hour, and when she had reached a point nearly opposite the arsenal at Troy, the said steamboat C. Vanderbilt, a steamboat of the largest class used for the transportation of passengers and freight on said river, was perceived coming up the river from Albany, and directing her course directly toward the said tug-boat and the boats which she had in tow. The tug-boat blew her whistle, but the said steamboat, without slacking her speed, which was at the rate of more than twelve knots per hour, continued her course toward the said tug-boat and the said boats which she had in tow, and struck the said canal boat Canisteo
3 stem on on her starboard side, and so greatly injured the said canal boat that she sunk almost immediately, notwithstanding the best efforts of those who had her in charge to keep her afloat, and was, with her cargo, totally lost.

Sixth. Such collision could have been easily avoided by said steamboat, the channel being at the place of the collision sufficiently wide to have enabled said steamboat to pass a quarter of a mile to the right of said tug and canal boats, if those who had charge of her had been so minded.

Seventh. At the time when the danger of said collision was first perceived from said tug boat and canal boats it was impossible for them to get out of the way of said steamboat, nor were there any means to which they could with propriety have resorted for that purpose.

Eighth. The value of said canal boat, apparel, furniture, &c., was thirteen hundred dollars, and the value of said cargo five thousand one hundred and ninety-five dollars and sixty-five cents, and by reason of the careless, negligent, unskilful, and improper management of the said steamboat C. Vanderbilt and of the collision thereby occasioned as aforesaid, your libellant has sustained damages to the amount of seven thousand dollars, or thereabout, for *for* which he claims reparation in this suit.

Ninth. Said steamboat C. Vanderbilt is now lying in the port of New York, and within the jurisdiction of this court.

Tenth. Since such collision your libellant has, through his attorney, in a friendly manner, applied to the owners of said C. Vanderbilt for reparation for the damages suffered by him by such collision, which has been refused by them.

4 Eleventh. All and singular the premises are true.

Wherefore your libellant prays that process in due form of law may issue against said steamboat C. Vanderbilt, her engine, ma-

chinery, boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid, with costs, and for such further or for such other relief and redress as to right and justice may appertain and the court is competent to give in the premises.

A. C. MORRIS, *Proctor.*

On the 9th day of July, 1863, before me appeared personally Andrew C. Morris, the proctor for the above libellant, and was sworn to the truth of the foregoing libel; and said proctor further swears that the said libellant resides out of this district and in the city of Buffalo, and is now absent from this district.

[SEAL.] ROB'T MURRAY, *Notary Public.*

[Internal revenue stamp.]

Indorsed: 18–37. District court of the United States for the southern district of New York. Robert H. McKibben *vs.* Steamboat C. Vanderbilt, her engines, &c. Libel. A. C. Morris, proctor. Filed July 17th, 1863.

5 *Stipulation for libellant's costs.—Entered into pursuant to the rules and practice of this court.—Filed the* 17 *day of July,* 1863.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-three, by Robert H. McKibben, against the steamboat "C. Vanderbilt," her engines, boilers, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat, her engines, &c., may be condemned and sold to pay the demands of the libellant, and the said libellant and John S. Farran and Henry Wild, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

ROB'T H. McKIBBEN,
By A. C. MORRIS, *Proctor.*
JOHN S. FARRAN.
HENRY WILD.

Taken and acknowledged this 17th day of July, 1863, before me.
JOHN A. OSBORN, *U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Farran and Henry Wild, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN S. FARRAN.
HENRY WILD.

Sworn to this 17th day of July, 1863, before me.
JOHN A. OSBORN, *U. S. Commissioner.*

Recorded the 17th day of July, 1863.
———— ————, *Clerk.*

[Internal revenue stamp, cancelled.]

6 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-three, by Robert H. McKibben ag'st the steamboat C. Vanderbilt, her engines, boilers, tackle, &c.—collision, $7,000—for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libellant, that they be and appear before the said court, to be held in and for the southern district of New York, on the 4th day of August next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 17th day of July, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh.

[SEAL.] GEO. F. BETTS, *Clerk.*
A. C. MORRIS, *Proctor for Libellant.*

7 In obedience to the within monition, I attached the steamer C. Vanderbilt, &c., therein described, on the 17 day of July, 1863, and have given due notice to all persons claiming the same that this court will, on the 4 day of August, inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY, *U. S. Marshal.*

Dated Aug. 4, 1863.

Indorsed: Vol. 18, page 37. Southern district of New York, United States district court. R. H. McKibben *vs.* The St'boat C. Vanderbilt, her engines, tackle, &c. Monition ret'ble Aug. 4, 1863. A. C. Morris, proctor for libellant. Filed 18 Aug., 1863.

I hereby depute L. Horton to execute the within process.
Dated July 17, 1863.

R. MURRAY, *U. S. Marshal.*

8 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 18th day of August, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the honorable Samuel B. Betts, district judge.

ROBERT H. McKIBBEN
vs.
THE STEAMBOAT C. VANDERBILT, HER TACKLE, &c. } 18–37.

The marshal having returned on the monition issued in the above-entitled cause, "the steamer C. Vanderbilt," &c., attached, and that he had not given due notice, &c.;

Whereupon Mr. Chas. Jones appears for the claimants, who have 10 days to answer herein.

9 Indorsed: Vol. , No. . United States district court for the southern district of New York. R. H. McKibben *vs.* the St'boat C. Vanderbilt, her engines, tackle, &c. Order for tenu on return of process. Chas. Jones, proctor for cl'mts. Filed the 18th day of Aug't, 1863.

10 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the 20 day of July, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the honorable Samuel R. Betts, district judge.

THE STEAMBOAT C. VANDERBILT, HER ENgine, &c.,
asm.
ROBERT H. McKIBBEN.

And now David Haywood, intervening as agent for the interest of the New Jersey Steam Navigation Company in the said steamboat,

appears before the honorable court and makes claim to the said steamboat, &c., as the same are attached by the marshal, under process of this court, at the instance of Robert H. McKibben, and the said David Haywood avers that he, as agent, was in possession of the said steamboat at the time of the attachment thereof, and that the company above named is the true and bona fide owner of the said steamboat, and that no other person is the owner thereof; and the said David Haywood, the true and lawful bailee thereof, as agent; wherefore pray to defend accordingly.

The New Jersey Steam Navigation Co., by—

D. HAYWOOD, *Ag't.*

CHAS. JONES, *Proctor for Claimant.*

11 SOUTHERN DISTRICT OF NEW YORK, *ss:*

David Haywood, being duly sworn, deposes and says that he resides in the city of New York; that he is the agent of the owner of above-named steamboat; that the owners of said steamboat is a corporation created by and under the laws of the State of New Jersey, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamboat; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

D. HAYWOOD.

Sworn to and subscribed this 20th day of July, A. D. 1863, before me.

GEO. W. MORTON,
U. S. Commissioner.

[Internal rev. stamp.]

Indorsed: Vol. 18, No. 37. United States district court for the southern district of New York. The St'boat C. Vanderbilt *asm.* R. H. McKibben, Chas. Jones, proctor for claimant. Claim of the New Jersey Steam Nav. Co. Filed the 20th day of July, 1863.

12 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the* 20 *day of July,* 1863.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-three, by Robert H. McKibben against the steamboat C. Vanderbilt, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat, her tackle, &c., may be condemned and sold to pay the demands of the libellant, and the parties hereto [illegible] consenting that in case of default or contumacy on the part [illegible]laimants or their sureties, execution for the sum of two hun[illegible]d fifty dollars may issue against their goods, chattels, and

And whereas, also, a claim has been filed in said cause by the New Jersey Steam Navigation Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

The New Jersey Steam Navigation Co., by—

D. HAYWOOD, *Ag't.*
D. HAYWOOD.
D. DREW.

Taken and acknowledged this 20 of July, 1863, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

David Haywood and Daniel Drew, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

D. HAYWOOD.
D. DREW.

Sworn to this 20th day of July, 186 , before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 20 day of July, 1863.

G. F. B., *Clerk.*

[Internal rev. stamp.]

U. S. district court.

13 ROBERT H. McKIBBEN
v.
THE STEAMBOAT C. VANDERBILT, &c.

I approve of the sufficiency of Daniel Drew and David Haywood, as sureties to the bond and stipulation executed by them in this cause.

Dated Aug. 22, 1863.

A. C. MORRIS, *Proctor for Pl'ff.*

Indorsed: 18–37, U. S. district court. Robert H. McKibben ag'st the Steamboat C. Vanderbilt, &c. Approval of sureties. Charles Jones, proctor for cl'm'ts. Filed Aug. 22, 1863.

14 *Bond to marshal.—Act of Congress March* 3, 1847.—*Filed the* 20 *day of July*, 1863.

District court of the United States of America for the southern district of New York.

Know all men by these presents that we, the New Jersey Steam Navigation Company, David Haywood, and Daniel Drew, are held

and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of fourteen thousand dollars, to be paid to the said Robert Murray, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 20 day of July, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-three, by Rob't H. McKibben, libellant, against the st'boat C. Vanderbilt, for the sum of seven thousand dollars, on which process of attachment has issued, and the said steamboat, &c., is in custody of the marshal under the said attachment, and the said company has applied for a discharge of said steamboat, &c., from the custody of the marshal, and has filed a claim claiming the said steamboat, &c., as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such that if the above-bounden New Jersey Steam Navigation Company, David Haywood, and Dan'l Drew, shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be in full force and virtue.

The New Jersey Steam Navigation Co., by—

D. HAYWOOD, *Ag't.* [SEAL.]
D. HAYWOOD. [L. S.]
D. DREW. [L. S.]

Sealed and delivered and taken and acknowledged this 20 day of July, 1863, before me.

GEORGE W. MORTON, *U. S. Com'r.*

UNITED STATES OF AMERICA, *Southern district of New York, ss:*

David Haywood and Daniel Drew, being duly sworn, depose and say, and each for himself saith, that he resides in the city of N. Y., and that he is worth the sum of twenty-eight thousand dollars, over and above all his just debts and liabilities.

D. HAYWOOD.
D. DREW.

Sworn to this 20 day of July, A. D. 1863, before me.

GEO. W. MORTON, *U. S. Com'r.*

I approve of the sufficiency of the sureties to the within bond. Dated this 17 day of Sept., 1863.

SAM'L R. BETTS.

Recorded the 20 day of July, 1863.

G. F. B.

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the U. S. court-rooms, in the city of New York, on Saturday, the 22 day of August, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the honorable Samuel R. Betts, district judge.

THE STEAMBOAT C. VANDERBILT, HER ENGINES, tackle, &c.,
asm.
ROBERT H. MCKIBBEN.

On filing claim and stipulation for claimant's costs, together with a bond, under the act of Congress, in double the amount claimed, approved by the proctor for lib'l'nt, on motion of Chas. Jones, proctor for the claimant, it is ordered that the appearance of the claimant be, and the same is hereby, entered, and that a copy of this order be delivered to the marshal.

16 Indorsed: Vol. 18, No. 37. United States district court for the southern district of New York. The St'b't C. Vanderbilt, her engines, tackle, &c., *asm.* Rob't H. McKibben. Chas. Jones, proctor for cl'm'ts. Order to marshal. Filed the 22d day August, 1863.

17 To the judge of the district court of the United States for the southern district of New York:

The answer of the New Jersey Steam Navigation Company, owners of the steamboat C. Vanderbilt, intervening for their interest therein, to the libel of Robert H. McKibben against the said steamboat, her engines, &c., answers and alleges as follows:

First. That the respondents have not any knowledge or information sufficient to form a belief whether the said libellant was the owner of the canal boat Canisteo mentioned in the said libel, or of the cargo therein, or as to the value of the same, or whether the said canal boat was used or employed as in the said libel alleged; and the said respondents therefore controvert all the statements and allegations in that behalf in the said libel contained.

Second. That the respondents deny all the other statements and allegations in the said libel, except as hereinafter admitted or stated.

18 Third. The steamboat C. Vanderbilt belonging to a regular line of steamboats running between the cities of New York and Troy, on the Hudson river, for the conveyance of passengers and freight, left the city of New York for Troy on the 15th day of May, 1863, at six o'clock in the evening, and proceeding on her regular voyage, arrived at a point in the river known as Washington bar, about one and a half miles below her regular landing place in Troy, at about half past five o'clock in the morning of the 16th day of May. To pass over this bar the said steamboat was slowed, and there being a fog at the time, she blowed her whistle while crossing

the bar to give warning to vessels in the vicinity of her approach, and thereafter continued to run slowed in the usual track of steamboats going up the river until she reached a point about opposite the lower side-cut at West Troy, when, from the sound caused by the escape of steam, the persons in charge of the C. Vanderbilt became aware that there was another steamboat near them, but in con-
19 sequence of the fog, which had at that time become thicker, they could not see this steamboat or discover the way she was heading, and immediately thereupon she was stopped and her whistle blowed to warn those in charge of the other boat of the proximity of the C. Vanderbilt. This whistle was heard and answered by the other boat, and the C. Vanderbilt continued to move slowly through the water until the other steamboat came in sight, having in tow four canal boats, two on each side, and heading down the river directly towards the C. Vanderbilt. The C. Vanderbilt was immediately thereupon backed, but the O. H. Hubbard kept on her course, and with the boats in tow came in collision with the C. Vanderbilt, and the boats broke adrift, and shortly after the canal boat Canisteo sunk.

Fourth. The O. H. Hubbard was not stopped or backed at any time after those in charge had become aware of the proximity of the C. Vanderbilt, but she kept on her course until the collision,
20 without making any efforts to avoid the same. The C. Vanderbilt could not have avoided the collision by changing her course, when the O. H. Hubbard and her tow were first seen, but for the purpose, and as the only means of avoiding the collision, the C. Vanderbilt was backed and continued backing, and had little, if any, headway on when the boats came together.

Fifth. At the time the O. H. Hubbard, with her tow, left her dock, which was not more than three-quarters of a mile above the place of the collision, the weather was foggy, and there was a current down the river, in consequence of a freshet, of between three and four miles an hour, and it was improper for the O. H. Hubbard, being a vessel of small power, with a heavy tow, which she could not manage, to leave her dock until the weather became clear. There was plenty of room for her between the C. Vanderbilt and the west shore, and she could have gone further to the westward, and should
21 have stopped and backed when she first saw or knew of the approach of the C. Vanderbilt.

Sixth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court will be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

The New Jersey Steam Navig't. Co.

D. DREW, *Pres't.*

Sworn to this 27th day of Nov'r, 1863, before me. Witness my hand and official seal.

[SEAL.] EDW'D C. COWLES,

Notary Public in and for the City and County of New York.

CHAS. JONES, *Proct. for Resp'd'ts.*

Indorsed: 18–37. U. S. district court. Robert H. McKibben, ag'st The Steamboat C. Vanderbilt, &c. Answer. Charles Jones, proctor for claimant. Filed Nov. 28th, 1865.

22 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 23 day of July, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Samuel R. Betts, district judge.

ROBERT H. McKIBBEN,
v.
THE STEAMER C. VANDERBILT, HER TACKLE, &c.

This cause being called in its order on the calendar, ordered hearing. Pleadings read.

Evidence for libellant.—Charles H. Hayner, William Ward, Levi Van Aken, Hiram G. Tyson, Thomas Ward, Phenias Osborn.

Cause adj'd till 11 a. m. to-morrow.

Evidence for libellant.—Hugh McKibben, sworn; Levi Van Aken, recalled.

Evidence for Cl'm't.—Peter B. Schafer, sworn; Thomas Towell, sworn; Nathan H. Noyes, sworn; C. M. Farnham, sworn; Daniel Lasher, sworn; John Murphy, sworn; Lansing Huger, sworn.

23 *Evidence for libellant.*—Charles H. Hayner, recalled.

Feb'y 25.—Ordered that cause be adj'd for argument till the 26 inst.

Feb'y 26.—Cause cont'd.

Mr. Chas. Jones argues for the claim'ts; Mr. Nash argues for the libel'nts.

Cur. adv. vult.

24 *Testimony on hearing before Hon. Judge Betts.*

U. S. district court.

ROBERT H. McKIBBIN
vs.
ST'BOAT C. VANDERBILT.

Feb'y 23, 1864. Mr. Nash and Mr. Morris, for libellants; Mr. Charles Jones, for claimants. Evidence for libellant. Pleadings read.

Charles H. Hayner, sworn:

Was captain of steam tug O. C. Hubbard in May last; left her May 16th, with canal boat Canisteo and three others in tow; left upper side-cut west side of river at Troy, a little above usual landing place of Vanderbilt and boats; left 5 to 6 a. m., very near 6; we were in middle, two boats each side of us; C. was on our larboard side next to propeller; one boat outside of her; 2 boats on starboard side; weather was a little dense, but could see from shore to shore, clear

enough for any steamboat to navigate; water was very high; a big freshet current, ran 4 to 5 miles an hour; we swung off dock-head down the river; were going slow; can't go very fast; were on west side, near 150 to 200 feet from west shore; can't get much headway on when we tow canal boats; no steamboat can; the H. was a propeller, high pressure; we blowed our whistle each 1 or 2 minutes regularly; were working shut off, slowed; first thing I heard of Vanderbilt, saw her wheels before she hove in sight; hadn't heard any
25 whistle from her at that time; then blowed our whistle, and she answered as soon as she could; she could tell near where we were by that; we stopped our engine; she hove in sight within 3 or 4 minutes after we stopped; her position was then heading right for the Canisteo's bow; she was sheered a little to *to* the eastward; she was near the W. shore, not W. of the propeller; if they hadn't altered their course they would have went between the canal-boats and hit the propeller; she was then coming through the water 9 to 10 miles an hour, against the current, when I first saw her; I don't think her wheels were stopped; couldn't have time to reverse her in that time; when we first saw her we were drifting; I rang to back, and we backed as hard as we could; our propeller had good power, have towed 16 boats; the V. was 200 to 300 feet off when I saw her; no natural obstruction; it was more foggy than when we started; could see the shore, the W. shore; don't think we could see the E. shore; some good ways off from it; we began to back right after we heard the V.'s whistle; she hove in sight as soon as she whistled; she struck the C. 4 or 5 feet back of her bow, on her starboard side; effect was to part lines from other boats; 1 went down the river, we caught the others immediately; effect on the Canisteo was she filled in a very few minutes; her side was broken through at the point where the V. struck her; the C. drifted down near the lower side-cut, hitting the dock, and some boats outside, and then filled and sunk.

26 This collision took place near lower end of arsenal walls, about a mile from where we started—not far from a mile from where we started. Familiar with navigation of river; followed it 12 or 15 years. The depth of water was between 9 and 10 feet above ordinary tides at low water in summer; was navigable, at that time, from shore to shore. Followed the river as cook, fireman, deck hand, pilot, engineer, and captain. The width of river where collision happened was 1,000 feet or more. Vanderbilt's landing was on E. side of river; nothing in condition of channel which required the Vanderbuilt to be over on W. side. The Hubbard had five persons—full crew—engineer, pilot, cook, deck hand, and myself. Wm. Ward was pilot.

Cross ex'd:

Was bound to Albany that morning. The Hubbard was running between Troy and Alb'y, and down as far as Hudson. Did not tow to N. Y. Canal boats are called the large class boats, I think; know we got price of large class; should think were 17 foot beam; longer than my vessel; she is 57 feet. They were, perhaps, 75 or 80 feet;

all loaded with grain; that one with corn. They carry about 7,000 bushels as general thing; did not see any boat leave before me that morning to go down river; none left when I did. Blew whistle from where it commenced foggy; did not blow till got good ways down river; no occasion to do so when we started; we were below the ferry about the Rock House. Below skiff ferry when began blowing whistle. That was ¼ a mile above place of collision; continued blowing it. Blew every couple of minutes or so. Don't know exactly
27 how often before heard Vanderbilt's whistle. The channel, at the place of collision, is near middle of river in summer time. The river runs there north and south about. Her capt. was on board the Canisteo; he left her. He remained there as long as he dared. Did not see him when he got off; she was not to be steered; she was athwart-ships of river in a second after the collision. Did not go after her. Don't know how long I've known this canal boat. Belonged on the canal line in W. Troy. Have navigated river from Troy to N. Y. Know the Vanderbilt and Skiddy line of boats; with plenty of water they generally reach Troy from 6 to 7—about 6 a. m. The Hubbard could not back the tow in that freshet; could not have towed those canal boats from Albany to Troy against that freshet. When first saw Vanderbilt did not see her wheels; heard them; could not tell whether she was backing. Did not see her walking beam; when first saw her was within 200 or 300 feet of her in this fog. Had no opportunity before of forming an opinion of her speed at that time. The Canisteo was never raised. The last I saw of her she laid ashore between Troy and Albany.

Re-direct:

Made up my judgment from the way she was coming on to us so fast; saw neither wheels or walking beam before she struck. After she struck she separated the tows and went ahead; continued on to her landing. Her headway was not stopped from time I first saw her;
2 of the boats went under her guards; swung round, and that carried her toward the W. shore. Quick as she got clear went on;
28 worked ahead all the time; she was carried backward at no time; we threw a line, but couldn't get it to her. Don't know that any call was made on the Vanderbilt for assistance; her engine could not have been reversed from the time we saw her, I think. The effect of reversing the Hubbard's engine then would have checked her way; was backing. The tows had no way on them. Nothing could have done to save the Canisteo from sinking; she was cut loose by the blow and floated down.

Re-cross:

Did not back till saw Vanderbilt, then ordered pilot to back her; when first saw her was headed with the current straight down the river *the river*. Tide running 4 or 5 miles an hour. Had no way by steamboat by the current.

Wm. Ward, sworn:

Am a pilot; been so about 3 or 4 years; part of 2 y'rs between Troy and Albany; was pilot of the tug Hubbard in May last. Re-

member morning of collision with Vanderbilt; was on board at the time; we left between 5 and 6 o'clock that morning, I think; weather a little foggy; could see across the river, and quite a way down; see buildings on dock at Troy; acted as pilot that morning; went straight down river after starting; W. side of channel, nearest W. shore, about 200 to 250 feet from that shore. First indication of approach of Vanderbilt was noise of her wheels. That was before sch'r came in sight. Then stopped engine. Capt. told me to. Our boat blew whistle. Blew immediately after hearing wheels of Vanderbilt. It was answered by a whistle. Our engine was stopped, when capt.

29 told me. From time I heard her whistle should think was 8 or 9 minutes till she hove in sight. After she hove in sight, could see her between 200 or 300 ft.; could see W. shore from where we were; our engine was backed, I think; capt. rung bells to do so. When first saw Vand't she was coming straight for propeller; should think she was in motion. Bells rung to back as soon as saw Vanderbilt; we were stopped before we saw her. The Vand't came on and struck the Canisteo; she altered her course a little to the right first; sheered and struck; we had no way on us so as to alter courses; she would not mind helm; we did all we could to avert the collision. Heard no whistle from the V. till after we heard her wheels. Don't know that could determine the course of V. from the noise of her wheels. Our whistle was blowed; 1 whistle; heard from her was the same. This means keep to the right. Did not pay attention to V.'s wheels. The effect of the collision on the Canisteo was to sink her; she was cut loose by blow; she was swung round by it on the E. side. Been a freshet that morning between 8 or 9 feet from low water in summer time; plenty of water between banks, to within 10 feet of the shore; rather shoal below the dock there—I mean where the river widens—opposite foundry where collision occurred. Plenty of water there. Our boat and tows a little to W. of ordinary channel. The Vanderbilt was going when she struck us between 8 or 9 miles an hour through the water; we could have heard her whistle ¼ mile, if blown.

30 Cross ex'd:

After first saw Vanderbilt until the collision was, I think, 5 minutes. Did not notice her walking beam or wheels. Don't know how her engine was working. Think she was going 8 or 9 miles an hour, because, after I saw her she took a sheer; to best of my judgment the way she was coming was for the boats. When first blew our whistle that morning we were up near the lower ferry, (the skiff ferry.) That is about ¼ mile from place of collision, perhaps not so far. Blew more than one whistle that morning before collision; couldn't tell exactly how many. Blew whistle before we heard noise of the wheels of the boat. Blew whistle because of fog, to give warning to boats coming up that we were in way; began blowing whistle about 20 minutes or ½ an hour, or less time, after we left the dock; can't tell how long after left dock before collision took place. Did not attempt to change course of Hubbard after the V. hove in sight; knew she would not have minded helm after we commenced to back

up. The channel at place of collision is nearer W. shore, I should judge; it is very near the middle of river where the propellers go; a little nearer W. than E. shore. Rang to stop the boat as soon as heard the noise of the Vanderbilt's wheels.

Re-direct:

In ordinary summer time channel where collision took place—the channel is between 500 and 600 ft. In ordinary summer time the V. could have gone to E. of us. Partly should to W. of us; she might have gone that side in summer time.

31 Levi Van Aken, sworn:

Capt. of the Canisteo in spring of 1863; was on board own boat at time of collision; she had come through Erie canal from Buffalo; was taken in tow by the Hubbard; was bound for N. Y. The morning we left there was a light fog; could see across river, but not to distinguish persons; was on deck on way down; not acquainted with channel. The last time I saw the shore before collision was between 200 or 300 feet from it; was looking ahead; think bow of Canisteo was 20 feet ahead of tug; tug between us and W. shore. Don't think met anything till heard Vanderbilt. First heard her water wheels work. Had then heard no whistle from that direction. Don't think heard any whistle afterward; was standing on own deck 20 or 30 feet from bow, opposite pilot house of Hubbard. After hearing noise kept attention that way; she soon hove in sight. Heard Capt. Hayner tell pilot to blow whistle. Heard him say "stop the boat, here comes the Vanderbilt." Said that, I think, before he told him to blow whistle. Think I saw Vanderbilt as soon as she hove in sight; was looking as far ahead as could. Did not notice wheels or walking beam before she struck us; she was coming I thought very fast; don't know that I noticed manner in which her bow cut the water. After capt. gave the directions I walked forward to a horse stable we had on board; noticed that when the V. first appeared she shaped for W. side of river, and then turned a little towards the east—a sheer of 2 points, perhaps. I thought her 300 feet off at the time I first
32 saw her. Think she sheered in order to pass all our boats; she was not far enough off. If had taken a broad sheer was too near to clear us with headway she was coming; not judge of how many miles she was going an hour; she was going fast. Ever since leaving we had been going as slow as could and keep steerage way on our boats. Think headway checked considerably; was watching the boat hawser. Our boat was struck from 6 to 8 feet of her stem on W. side going down river; when V. struck her grabbed a big fender to ward her off; saw no use; when she struck the blow raised our deck; she went in about a foot into us, about 6 or 8 feet from our stem, right on the curve; our boat commenced taking in water and went down; we were separated from our tug; went down on E. side; left as soon as could get woman on deck. Got on the Hope, which had lain outside of us; saw the Canisteo go round, head up stream; she floated down W. side of V., I think. I went to Albany on this boat; saw, on my return, where they said she sunk, about 300 or 400

or 500 ft. towards the W. shore; she was loaded with corn and flour. After we left side-cut, fog got thicker. Looked as though clearing up when we left.

Cross-ex'd:

When I last saw W. Shore—I was about opposite steam ferry—to take notice of, I was looking ahead for boats; did not look at shore after that to see how tow headed; was not at my helm at any time; think a man was there when we swung round; don't usually do so; no one at helm at time of collision; am not a seaman; never
33 had to do with navigating steamboats; heard a whistle on propeller before collision; some 2 or 3 times after we started; may be more, I think.

Re-direct:

Was headed up river when started and swung round; while doing this had a man at helm. This was about the time I last noticed W. shore.

Hiram G. Teason, sworn:

Was on Hubbard at time of collision as engineer. Have been engineer 3 years; not on same vessel. Had charge of Hubbard at the time of collision; left the wharf between 5 and 6 o'clock. The weather was fine; could see across the river; could see out from the engine-room across the river; engine on deck. After leaving berth course was down river, 200 or 300 feet from westerly shore; had to round to in starting; don't know whether changed. I heard the whistle blowing several times; pilot blowed whistle; I did not see him; I was in the engine-room, and answered the bells as they were rung; when the Vanderbilt hit the canal boat, I looked out. After we rounded to, when the bell rung to slow, I slowed, and went down slow. The next thing I did was to stop her, and after that backed her. The bell rung to stop; the whistle was blown, and bell rung to back her. I was backing at the time the Vanderbilt struck her; the Vanderbilt struck her very hard; hard enough to sink, but how deep the blow, I couldn't say; she didn't strike the propeller at all; didn't see the Vanderbilt before she struck.

34 Cross-examined:

At the time of the collision my engine was reversed and engine backing; but as to the motion of boat, don't know. She was making about 80 revolutions per minute at the time of the collision. High pressure boat.

Thomas Ward, sworn:

Am brother of William Ward, the pilot of the Hubbard; was on board of the Hubbard as passenger at the time of collision; went aboard when she started. The weather was a little foggy when I started. It promised to be a pleasant day; could see across the river; could see wharves and houses. It was near 6 o'clock when we started. The course of the Hubbard was about south, nearest west bank; familiar with the river. My ordinary business is pilot; have been pilot

between Albany and Troy and from Albany to New York. The tug and the *the* Hubbard were on the west side of the ordinary channel; high water at this time; about 8 feet more than the ordinary. The weather got a little thicker after leaving; Hubbard blowed her whistle on the way down, first between the steam ferry and skiff ferry. I heard the Vanderbilt when she was coming up the river; heard her paddles; I was in the pilot house at the time; that was the first I could see or know of her; had not heard any whistle from her at that time. The Vanderbilt's whistle might have been heard a mile; fog might make some difference; when we heard her paddles the Hubbard rung her bells to stop her; alarm whistles blew before we
35 heard paddles. As soon as the fog struck in thick we blew the alarm whistle; as soon as we heard the paddles pilot rung the bell to stop her; then the whistle blew for her to take her side of the river; signal replied to. The rule of the river is to go to the right. As soon as Vanderbilt hove in sight bell rung to back our vessel; could see the Vanderbilt 300 feet off; could not tell whether Vanderbilt could clear us in that distance; she was coming up pretty rapidly; about 10 miles; nothing to measure her motion but the revolutions of her wheels; could see her wheels, and heard them revolving in the water; I saw her strike; a pretty heavy blow; sunk the boat. The Hubbard could not have gone over 150 feet westward without striking the wall. On the east side of the Vanderbilt was the whole width of the river. No reason why the Vanderbilt should keep on the west side, unless it be to see the land. She was heading pretty right for the tug on starboard bow; course changed enough to strike canal boat on starboard bow.

Cross-ex'd:

I don't know that I could swear that from the noise of paddle-wheels whether a boat is backing or going forward. In this case I shouldn't think the Vanderbilt would back so strong; we were between the steam ferry and the skiff ferry when the fog came in so strong.

Re-direct:

I heard no change of her paddle-wheels after I first heard them.

36 Phineas Ostram, sworn:

May, 1863, was capt. of the Ira A. Allen, a propeller. The Allen on the 16th was at West Troy. I know the Hubbard and her starting out that morning. I was getting ready to start too. The weather had been pretty foggy; but when Hayner went away it had lighted up considerable. If I had been ready I should have left when Hayner did. I thought it a proper morning to go.

Cross-ex'd:

It had been pretty thick before he left; after he left it began to hicken again, perhaps ½ an hour after. I didn't start for some time after the Hubbard did.

February 24th cause continued.

Libellant calls Hugh McKibbin, sworn:

Am brother of libellant in this case; know canal boat Canisteo. In May, 1863, Rob't H. McKibbin, the libell't, owned her; she was worth about, with furniture, $1,300; a low valuation; her cargo was 6,771 bushels and 14 lbs. corn, 9 bbls. flour. The corn was worth at Albany 76 cents a bushel, and the flour about $5½ a bbl; was not on board at time of collision; heard of it; saw her afterwards; she was lying near arsenal at Troy, under water; could see a little of rail.

Cross-ex'd:

37 Had known this boat 4 year; she was some over 8 y'rs old, or about that.

Re-direct:

She was throughly overhauled before she left Buffalo that spring.

Levi Van Aken, recalled:

Signed bills of lading for cargo on board this vessel.

Cross-ex'd:

Don't know agent of canal b't.

Claimaints call Peter B. Schafer, sworn:

Reside at Troy; am pilot of st'mboat; have been since 1845 on the North river between Troy and N. Y.; followed the water before that from the spring of 1830; familiar with navigation of river about Troy; was pilot on Vanderbilt at time of this collision; have been so three years this coming spring; U. S. licensed. She is a night boat, leaving N. Y. at 6 p. m.; with plenty of water in river and fair weather, our average time at Troy is 6 in the morning. The morning after we left N. Y., when we left Albany for Troy, weather clear; we were moving then about 6 miles an hour. It generally takes us from 1 hour to 1¼ to go that 6 miles; went at this rate till Washington bar; did not slow engine till then; that bar is about one mile below our dock at Troy. We slowed then—at the bar—did so
38 as not to pull the canal boats lying at lower side-cut away from their docks; went along slow to 900 feet above side-cut; then heard a propeller above; heard the steam exhausting—that was first indication I had that any vessel was near us; I then stopped the boat when I heard this noise; could see nothing of any propeller or vessel then; after stopping blew whistle; propeller answered it; blew one whistle; in about a minute and ½ she came in sight; it was the Hubbard with 4 canal boats in tow; she was about 250 feet off then; don't think more than that; I then rung bells to back engine immediately; suppose the order was obeyed. The boats immediately after came together; at the time they came together should not think the Vanderbilt could have had much way, from the time bells had been rung to back and stop. We were steering, after we left side-cut, N.NE. The current runs there about S.SW. and N.NE.; this is by our compass. The ordinary channel at about the place of collision is nearer W. than E. shore; when water is low have to run within 150 feet

of the W. shore. From time I slowed till the vessels came together, were about mid-channel way—the last time I saw the land.
39 After the fog shut in was going by compass; could see land plain when crossing Washington bar; saw the boats and propellers lying at the wharf; shortly above the short-cut the fog shut in thick; ran into a bank of fog there; had had none before; went into fog as heard noise of propeller: did not know which way she was going. From time ran into bank of fog to time of collision could see neither E. or W. shore. The direction of our boat was not changed from time of stopping to time of collision. I was at wheel; had charge of boat at that time. Mr. Bisnett and Mr. Powell were the wheelsmen; they were with me at wheel. Lookout man (Mr. Murphy) was forward. That morning there was a pretty high freshet in river, some 6 to 8 feet above ordinary stage of water; that made current, down river, say 4 knots an hour—as fast as that; after stopping engine, blowed whistle; blowed twice before came into bank of fog. The rule is to blow whistles when we can't see boats, and stop our boat till we find out what's ahead, and what direction; when we see vessel we take action to avoid. Our license requires us to blow whistles at short intervals when moving in a fog; we always do so
40 whether thick or not; could do nothing more than did to avoid collision. Our only plan was to back out if we could; so close when came in sight that there was not room to steer clear on either side; know this propeller. Don't think she could back her tow against the current.

Cross-ex'd:

Was within 250 or 300 feet of propellers at the side-cut; saw them distinctly; could not then see opposite shore; don't recollect looking that way though; it was then a little misty; then we first blowed whistle when we passed propellers; saw bank of fog ahead. If had seen Hubbard at that time, where she was when struck, we could have gone to E. of her; at ordinary stage of water, could not have done so, I think, at that place; could have done so if she had been opposite Clinton Foundry; she was about opposite a big tree on bank of river near lower end of arsenal wall; this tree not less than 1,200 ft. further down than the Clinton foundry; could not have passed the tow opposite that tree at an ordinary stage of water; at that tree think channel is 250 to 300 feet water wide at ordinary stage water; at that place can go within 75 feet of W. shore at ordinary stage of water; could not within 600 feet of E. shore; have
41 had occasion to pass boats at that point; sometimes go one side and sometimes other; try to go to right if can. From time passed bar, our course was as straight as we could make it for our landing. Passing these boats to right would, as we met them, have carried us out of straight course. We landed at Albany that morning about 5 o'clock. I think we left there—did not look at the time; we generally get in Troy about 6; that our average time; don't know what time that morning. Leaving N. Y. at 6 p. m. and arriving at Troy at 6 a. m. would require about 12½ knots an hour

Took the wheel at Kingston, from there to Troy; did not reach Albany earlier than usual; had no fog up to time of getting there; been delayed none by current, I think. Channel, at ordinary stage, between Albany and Troy, no more water than we need; better than usual that morning in that respect. Vanderbilt connected with the Rensselaer and Saratoga road, which left at 7.30; passenger and freight boat. This collision was, I think, from 1,200 to 1,500 ft. above Washington bar. From the head of the bar, as pilot, have only distances along river by which to determine rate of speed;
have no log; don't know how many revolutions wheels were
42 making before she was first slowed; she was slowed by signal
from me. First gave signal at head of Washington bar, just before came to lower side-cut. The signal was one bell; that is a signal to slow boat about ½, about as slow as she can go without stopping her; had not at this time entered fog; we always give this signal in crossing the bar; this bar extends all way across the river. When first heard escape of steam from propeller, gave 1 bell as signal to stop; that was all needed; as she was already slowed, gave signal (2 bells) to back after she came in sight. This is done by reversing engine; can't say it was done, as I was in p. house. The whistles are blown from p. house. I blew three whistles in all, at intervals before hearing the propeller's whistle. Mr. Lasber was engineer on this boat; never had any trouble about his obeying my signals. About daylight when reached Albany; generally lay there about 15 minutes, just to land passengers there, not freight. At rate of going my vessel couldn't have been wholly stopped within 250 feet, not with that current against us even; after ringing bell to back boat, wheels can be reversed immediately. At Troy that day did
not tell Mr. Hayner that my boat was not slowed till saw the
43 Hubbard; never talked with him about the collision; made a
statement of the occurrences for the company the next day after, when we got to N. Y.

Re-direct:

12½ miles an hour is the average rate for us from N. Y. to Troy. The whole distance our rate of speed between Albany and Troy is only about ⅓ as great as in deeper water.

Thomas Powell, sworn:

Am a boatman; been on North river 15 years; been on passenger boats at the wheel; was on Vanderbilt at time of collision, at the wheel; took wheel at N. Y.; was on the whole distance. Between Albany and Troy boat not slowed till we got to the bar; when there, Mr. Schafrer rung one bell to slow her. Weather, at that time, began to get misty; whistle was blown before bell rung to slow, and one afterwards; after this none rung till we came in bank of fog; at this time, after we came in fog, heard the exhaust of the propeller; we then rung a bell to stop her; then blew a whistle. The propeller then answered that whistle. We next saw the tow, (the Hubbard's;) then he rung to back her; when first saw propeller we were 200 ft., or a little over, off; fog very thick; could not see either shore;

know the channel where collision occurred. It is best to the westward. The V. was, I think, on usual track; was not looking at compass at time; her course from time she crossed bar to time of collision was not changed by moving the wheel.

Cross-ex'd:

In crossing the Washington bar, don't know exactly the course a vessel heads. After crossing bar we straighten up for our dock. In crossing bar, course is a little more to west than afterwards. This morning we went nearly straight up; don't know that changed wheel at all to alter course from time of slowing to the collision. I am familiar with the soundings of the river along there; the ordinary depth of the water on the bar is 8 or 9 feet; the water was from 8 to 10 feet freshet this morning. I saw the boats lying at the lower side-cut. I passed within a couple of hundred feet, I should judge. We might that morning have gone 200 feet nearer the easterly shore, may be more that morning. At ordinary, the channel is 350 feet wide at the cut, a little over it may be. We might at ordinary water have gone 100 feet or so further east. The object of slowing in crossing the bar is not to tear away these boats. We had come up about our usual run up the river. The shortest time I ever knew the
45 Vanderbilt to make between Albany and Troy, not much inside of an hour; have tested it by a watch; as a general thing it takes us the best part of an hour to go between Albany and Troy. Don't know what time we left Albany that morning; we were up to time, I should judge.

Charles Brisnett, sworn:

I am wheelsman on Vanderbilt; have been such 9 years; was acting as wheelsman on V. at the time of collision. When we came up to Washington bar the bell rung to slow the boat, as it was coming on a little foggy. After we crossed the bar we heard propeller ahead, so we stopped. The weather was getting thicker and thicker all the time. The next thing we saw was the tow; bell rung then to back. When we saw the propeller, the fog was pretty thick; could not see either shore. V. blowed her whistle 3 times; the first one on Washington bar; the next just above the bar; had just got off the bar; the next was when we heard the propeller. When V. blew her last whistle the propeller answered it by her whistle; that was the only one I heard. The course from the bar up to the cut was N. by E; I didn't observe by compass. The wheel was not changed
46 enough to change her course after leaving the bar; changed only to keep her steady. I don't recollect whether 'twas the wheel was changed when the propeller came in sight.

Cross-ex'd:

We got to Troy about 10 minutes after 6 o'clock. The collision stopped us a little while. The course we took that morning was the one we took in ordinary times, I think. It was foggy. We always slow on coming to the bar, whether it is foggy or not. It was a bank of fog as it was called. When we got to Washington bar we could see the bank of fog ahead. We saw the boats when we went by.

Nathan H. Noyes, sworn:

I reside at Lancingburg; my business is steamboating. I have been such, as master and pilot, for 10 years. Am familiar with the navigation of the river at Troy, at that vicinity. Channel runs the best on the west shore, along by the side-cut. There is as good water close in by the docks as there is off. I recollect this morning of the collision. We were at E. Troy over night of the morning. In the morning we went over just above the upper side-cut, Green Island dock. I saw the Hubbard that morning; I saw her lying in below the jig in the dock above the side-cut; saw her when, she got
47 under way. The weather then was foggy. When I left E. Troy side to go over, it was very thick. At the time the Hubbard left with her tow, I think the fog was not quite so thick. In my judgment, the weather as it was, I thought at the time I would not be willing to go off with a tow. My impression is I could not see across the river at the time the Hubbard left. I know about what work the Hubbard can do. I don't think the Hubbard could have backed that tow to get stern-way on to the land with that current. Current from Troy to nail works, I should think it was at 4 miles an hour.

Cross-ex'd:

I had command of the Davidson at that time, a side wheel-steamer, a tow boat. I went over there to get a tow to go down the river with. I went down the river the same morning with a tow about 8 or 9 o'clock. I crossed over from E. Troy in the neighborhood of 5 a. m. I went over with my boat. I got the tow afterwards. Not ready for me then. Looking at the diagram, I should think the four boats there are about in the channel way. The water between arsenal wall and the Clinton Foundry opposite was plenty at that time. Going down that morning, I took the usual course, about 300 feet
48 to the arsenal wall. In ordinary water, we go that near. That leaves room enough for vessels to go to the eastward of us. The Hubbard was capable of handling her tow that morning.

Re-direct:

I should think the arsenal wall was 50 feet from the water at low water.

Charles W. Farnham, sworn:

I reside at Troy. Have been captain of steamboats for several years. I recollect the morning of this collision. I was on board of my boat at foot of Ferry st., Troy, east side.

The weather that morning was foggy. I did not see the Hubbard start with her tow, but saw her passing down the river past where I was. When I saw her she was going directly into a bank of fog. It was rather clear above. I can't say whether I could see the shore. I am under the impression this was about ½ to ⅝ of a mile above where the collision took place. I should think when I saw her it was about ½ the distance from where she left to place of collision. The rate of current down that morning was at the rate of from 4 to 4½ miles
49 an hour. In my judgment I don't think it prudent to run a vessel in a fog any way.

Cross-ex'd:

I went down the river that day; some time during the forenoon I went down. The water's edge is from 50 to 75 feet from the arsenal wall in ordinary water; that propeller Hubbard with her tow could have gone to within 50 feet of the water's edge; that is her westward beat; that would leave her for the Vanderbilt to pass her to the eastward at ordinary water. As the water was that morning, the Hubbard might have gone further westward and the Vanderbilt further east. This diagram represents the relative positions of the arsenal wall and the Clinton Foundry. I should think the advantage would be with the Vanderbilt in going up the current. Hubbard rated 60-horse power. Vanderbilt's tonnage about 1,100, Hubbard with her tow about 600 tons. There is a dock at the Clinton Foundry. The water along the dock at Clinton Foundry is 6 or 7 feet at ordinary low water; as you go up there is a middle ground. The Hubbard I should think was sufficient to take her tow to Albany if the way had been clear.

50 Re-direct:

She was sufficient to handle it very well and avoid collision; in a freshet vessels have got to come up to the westward; they go over to Clinton dock; the vessel, after she got over Washington bar and cleared a vessel 200 feet, her course would be N. NE.

Re-cross:

These side-cuts are outlets of the Erie canal and there is a great deal of towing these canal boats from this place in the spring season.

Daniel Lasher sworn:

Engineer of steamboats; have been such about 23 years on N. river and Long Island sound, &c.; I was engineer of the Vanderbilt at the time of the collision; I had charge of the engine at the time, and had been from Hudson; from Albany up we were making about 4½ knots an hour; there was a bell rung to stop; we stopped twice before this collision happened; I recollect a bell to slow before the collision; she was slowed; the next bell was to stop and back; rung bell to shut her off, then three bells to stop and back; might have been running slow perhaps ½ a minute before the 3 bells rung to stop and back; the time to reverse the engine at the time
51 of the bells to stop and back would take 2 or 3 seconds; bells obeyed, engine reversed; the wheels had made 3 or 4 revolutions back before the collision; the 3 or 4 revolutions back would give no stern-way as we were then running; the weather was very thick fog.

Cross-ex'd:

After the vessel got foul of us I went out to see what was the matter and I couldn't see the land on either side; I went out to help save the canal boat; left my engine in charge of the 3d engineer; the action of the boat was standing still when I went out; in going backward the engine is worked by hand at the first start; work the engine by hand so that the wheels make 10 revolutions; 3d engineer worked

the engine by hand at this time; don't know whether the 3d engineer was a licensed; I didn't handle them at all; the chief engineer don't generally work the engine; 2d and 3d engineers do it; I didn't go out till after we struck; the time between the last signal of the pilot and the time I went out to see what was the matter, it was about 3 seconds; engine-room on deck; the last signal was one bell, to stop the engine; the last signal before that was three bells; the
52 time between the last signal to stop the engine and the three bells was no time of any consequence; the last signal before the three bells was one bell to shut her off; to shut her off is to shut the steam off and run slow; we had stopped before that, and had just started; one bell to slow and one to stop; before we started the last time the bell to stop was two or three minutes; the way I calculate how fast the boat is going is by the steam she is carrying; between Hudson and Albany she might have made 12 miles an hour, in deep water; don't know what time we got to Albany; I think there were bells rung to slow the boat; don't know about where it was; very seldom make a passage between Albany and Troy but we slow or stop on account of shoals, shallow water, &c., &c.

Re-direct:

Two on duty at a time in working the engine; one of the two, or two out of the four, are licensed engineers; the other two are to aid and obey the orders of the chief and second engineer. All the bells that were rung that morning were obeyed, and immediately on their being rung.

John Murphy, sworn:

In May, 1863, at the time of collision, I was on the Vanderbilt; I was on the lookout; I was on the forward deck that morning,
53 before the collision; was there when we crossed Washington bar, on the lookout; after we got up to the side-cut, Vanderbilt's whistle blowed, and went on a little further and it blowed again; I then heard the propeller, and was just going to give notice when the Vanderbilt's whistle blowed again, and propeller answered; heard no whistle from the propeller before that. I could see her when she blew her whistle; it was not more than 5 or 10 seconds before I saw her, and I sung out "Mr. pilot, a tow ahead," and I couldn't tell whether she was going up or down the river; I couldn't see either shore at this time.

Cross-ex'd:

The time between the first and third whistle of the Vanderbilt might have been 2 or 3 minutes. The first whistle was blown because it was very thick ahead. The third whistle was answered by the propeller; that was the first I heard of the propeller's whistle; the pilot heard the exhaust of the propeller as quick as I did; I can't hear the bells on the forward deck; I saw those boats at the lower side-cuts, in going up; the fog was just beginning to settle there; we were in plain sight of the boats, about 100 or 200 feet from them; generally run about that near to them.

54 Lansing Furger, sworn :

Was on V. at the time of the collison; was in engine-room at the time of the collision, assisting the engineer; I obeyed the bells rung by the pilot; first one was to stop her; the next was to back her; I worked her engine backward before the collision, four revolutions at the time, backward.

Cross-ex'd :

Not a licensed engineer at the time. The last bell was to back before the collision; the bell to slow her was some minutes before the bell to stop her. After leaving Albany we stopped; don't know for what; can't tell how many revolutions a minute after leaving A.; made from 8 to 10 turns backward by hand. She makes 18 or 19 turns a minute when she is running in deep water, at 12 miles an hour; couldn't say how many turns she was making going over the bar.

Evidence for libellant.

Chas. H. Hayner, recalled :

I saw the pilot of the Vanderbilt at Troy that same day; he said they didn't slow the boat from the time they left Albany till they got to the bank of fog. He told me this at West Troy; I don't
55 recollect that he made any complaint about the engineers. I have passed the steamboat Columbia with six boats at the arsenal wall; she is a tow boat; she has had six and I with two a-tow and passed this place in ordinary water.

Cross-ex'd :

Nobody was present at this conversation I speak of.

Evidence all in.

56 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the 21 day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Present: the honorable Samuel R. Betts, district judge.

R. H. McKibben
vs
The Steamer C. Vanderbilt, the New Jersey }

This case having been heard on the pleadings and proofs, and argued and submitted on briefs by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellant recover in this action against the steamer C. Vanderbilt, her tackle, &c., the damages by him sustained by reason of the collision in the pleadings mentioned; and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report therein to this court with all convenient speed.

SAM'L R. BETTS.

57 Indorsed: Vol. 18, No. 37. United States district court for the southern district of New York. R. H. McKibben *vs.* The St'boat C. Vanderbilt—the New Jersey Steam Navigat. Co., A. C. Morris, p. lib'l'ts; C. Jones, proctor for cl'm'ts. Decree, libellants, and order of reference. Filed the 21st day of April, 1864.

58 *Notice of reference.*

District court of the United States for the southern district of New York.

R. H. McKIBBEN
vs.
THE STEAMBOAT C. VANDERBILT.

In conformity with the order entered in the above-entitled cause, you will please to take notice that the reference ordered therein will be proceeded with before me, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office at the United States court buildings, at 41 Chambers st., in the city of New York, on the 6th day of Sept. inst., at 12 o'clock in the noon of that day, at which time and place you are hereby notified to attend, with the testimony you may have to offer in the matter referred.

Dated New York, the 3d day of Sept., A. D. 1864.

Yours, &c.,

GEO. F. BETTS, *United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.*

59 Indorsed: Dist. court of the U. S. R. H. McKibben *vs.* The St'b't C. Vanderbilt. Notice of reference. A. C. Morris, pr. for lib'l't.

I admit due service of a notice of which within is a copy. Sept. 3, 1864.

CHAS. JONES, *Proctor.*

60 U. S. district court.

ROBERT H. McKIBBEN
vs.
THE STEAMBOAT C. VANDERBILT, her tackle, &c.

1854, Sept. 6. Mr. Morris appears for libellant, proves service of notice of reference upon Charles Jones, esq., proctor for claimant.

Put in evidence:

Deposition of Henry B. Sanders: Value $1,300 to $1,400.

Deposition of Cornelius A. Van Slyck: Value $1,200 to $1,400.

Deposition of Hugh McKibben: Value $1,300; flour worth $5 50 per bbl.; corn worth 79 c. per bushel. 9 bbls. flour.

Deposition of Louis B. Trowbridge: Cargo 6,771 bushels corn, worth 79 c. per bushel. Boat, 1,200; corn, 5,349 09; flour, 49 50. Total, 6,495. Interest, 525 56.

61 Indorsed: 18–37. U. S. district court. Robert H. Mc-

Kibben *vs.* The Steamboat C. Vanderbilt: Min. on reference.

62 District court of the U. S., northern dist. of New York.

ROBERT H. McKIBBEN
vs.
THE STEAMBOAT C. VANDERBILT.

Let the witnesses within named be examined de bene esse before me, at my office, No. 13 government buildings, in the city of Buffalo, on Saturday, July 2d, 1864, at 11 o'clock in the forenoon of that day.

Buffalo, June 25, 1864.

[SEAL.] GEO. GORMAN,
U. S. Commissioner, N. Dis't, N. Y.

63 United States district court, northern district of New York, in admiralty.

ROBERT H. McKIBBIN
vs.
THE STEAMBOAT C. VANDERBILT, the New Jersey Steamboat Navigation Company, claimant.

NORTHERN DISTRICT OF NEW YORK, *City of Buffalo, ss:*

Robert H. McKibbin, being duly sworn, deposes and says that he resides at said city of Buffalo and is the libellant in the above-entitled cause; that heretofore, and in the month of May, 1864, the said cause was tried before his honor Judge Betts, United States district judge for the southern district of New York, at the city of New York, in said district, and a decree for damages and costs in favor of said libellant, duly entered in said cause in the office of the clerk of said court together with an order referring the same to a United States commissioner to ascertain and report the amount of the libellant's damages therein; that deponent has fully, fairly, and truly stated to his counsel the facts which he expects and believes he can prove, by the

64 testimony of each and every of the witnesses hereinafter named, and that this deponent is advised by his counsel, and verily believes, that the testimony of Lewis B. Trowbridge, Cornelius A. Van Slyck, Henry B. Sanders, Hugh McKibben, Lester Avery, and others, and of each of them, is material and necessary for said libellant in ascertaining the amount of such damages; that each and all of said abovenamed persons reside at the said city of Buffalo except the said Lester Avery, who resides at the city of Syracuse, in said State of New York, and each and all of said witnesses reside more than one hundred miles from said city of New York, where said cause was tried, and where the commissioner to whom the same was referred as aforesaid resides.

R. H. McKIBBIN.

Subscribed and sworn before me this 15th day of June, 1864.

GEO. GORHAM, *U. S. Commissioner.*

[U. S. revenue stamp, cancelled.]

65 UNITED STATES OF AMERICA, *Northern district of New York, ss:*

Be it remembered that, on the second day of July, A. D. 1864, I, George Gorham, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the court of the United States" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at No. 13 government buildings, in the city of Buffalo, in the said northern district of New York, in the State aforesaid, Henry B. Saunders, Cornelius A. Van Slyck, Hugh McKibben, and Lewis B. Trowbridge to testify and the truth to say on the part and behalf of the libellant in a certain suit or matter of controversy now de-

66 pending and undetermined in the district court of the United States for the southern district of New York, wherein Robert H. McKibbin is libellant against the steamboat C. Vanderbilt, the New Jersey Steamboat Navigation Company, claimant. And the said witnesses being about the age of 35 to 50 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said witnesses, and they did thereupon depose, testify, and say as follows, viz:

Henry B. Saunders sworn for libellant: I live in the city of Buffalo; I am a ship carpenter and calker; part of my business is to make and repair canal boats; I am now foreman in the ship yard of Van Slyck & Notter, and their business is the building and repairing of canal boats to a large extent, in the city of Buffalo; I know the canal boat "Canisteo;" she was repaired at Van Slyck & Notter's in the spring of 1863; she was thoroughly repaired at that time; I helped build this boat at the same ship yard; I knew from what I heard of sales of canal boats on the Erie canal what they were worth in the spring of 1863; I knew from sales made at the yard what boats were worth, and also from sales made otherwise. After this boat was repaired she was worth from $1,300 to $1,400; she was fit for carrying

67 grain at that time—she was sound; I had overhauled her so I could see all her timbers. I have worked for Van Slyck & Notter, or other firms in the same yard, since 1849, and in the same business.

H. B. SAUNDERS.

Cornelius A. Van Slyck: I live in the city of Buffalo and am one of the firm of Van Slyck & Notter, and have been engaged in the business of building and repairing canal boats extensively, in Buffalo, for ten years and upwards; I have known the market value of canal boats on the Erie canal for the last three years; I have known this market

value from sales which have been made during this time; I knew the canal boat "Canisteo;" we built her and repaired her, and know all about her; after see was repaired in the spring of 1863 I should consider her worth, as boats were selling then, from 1,200 to 1,400 dollars; as far as I know she was in sound condition when she left my ship yard; I did not take particular notice; she was known as the "Canisteo," of Buffalo.

C. A. VAN SLYCK.

68 Hugh McKibben: I reside in the city of Buffalo; I was living in Buffalo in the spring of 1863; I knew the canal boat "Canisteo," of Buffalo; I saw to her repairs when she was repaired in Van Slyck & Notter's yard in the spring of 1863; I think it was some time in May—it was just before she was sunk; she was sunk on her first trip down after she was repaired; I was well acquainted with the price of canal boats from actual sales and purchases on the Erie canal in the spring of 1863; I think the value of the Canisteo in the spring of 1863, after she was repaired, would be fairly $1,300; she was in good condition. I have been interested in canal boats for the last four or five years; this canal boat was sunk in the Hudson river on the 16th May, 1863, at Troy; I saw her after she was sunk; it was the next day or the next but one after she was sunk; I went there to see if it were worth while to get her up to repair her; I thought she was worthless where she lay; I did not think it worth while to get her up; there was a large hole in her; she was sunk in about 7 feet of water; I tried to sell her as she lay, at Troy; I was acting for R. H. McKibben, the libellant; I tried to sell her and could not get
69 an offer. The corn that was in her was swept down the river by the current and freshet and tide; the cargo was entire loss; the cargo was corn and flour. I knew the market price of corn and flour in New York at that time; I had been doing business in New York; I left New York to come and see this boat; I knew the price of corn and flour from actual sales in the market; flour at that time was worth $5 50 per barrel, and corn was worth 79 cents per bushel, both in New York. This boat was a perfect wreck as she lay there; I saw her laying there six or eight months after, and I have never heard of her being got up. The value I have set on the flour is that of the lowest grade of flour; there was flour which was selling in the market at considerable higher price; the higher grades were selling at two or three dollars more.

H. McKIBBEN.

Lewis B. Trowbridge, sworn:

I have lived in Buffalo for ten years and more. I was one of the firm of Pease & Trowbridge, in 1863, and now. Pease & Trowbridge were common carriers and forwarders, and owners of canal
70 boats in spring of 1863. I knew the canal boat Canisteo of Buffalo. She belonged to Robert H. McKibben. He ran her and controlled her. On the first day of May, 1863, Pease & Trowbridge shipped on board the canal boat Canisteo six thousand seven hundred seventy-one bushels and fourteen pounds of corn. It was

shipped in Buffalo for New York, to be carried to New York on that boat by Robert H. McKibben, as a common carrier. McKibben was a common carrier. The boat had been repaired at Van Slycke & Notter's yard before this shipment, and her repairs were completed. On the 16th day of May, 1863, the day theboat sunk, corn was worth in the New York market 79 cents per bushel. R. H. McKibbin paid Pease & Trowbridge at the rate of 79 cents per bushel for this corn which was lost. McKibbin paid us for the whole cargo at that rate and for the amount I have stated. The amount paid us was $5,349 29 which was paid May 25th, 1863.

LEWIS B. TROWBRIDGE.

71 UNITED STATES OF AMERICA, *Northern district of New York, ss:*

I, George Gorham, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the testimony of Henry B. Saunders, Cornelius A. Van Slyck, Hugh McKibbin, and Lewis B. Freehart, the witnesses, is material and necessary in the cause in the caption of the said deposition named and pending in the district court of the United States for the southern district of New York, and the said witnesses lived at a greater distance than one hundred miles from the city of New York, the place of trial of said cause. I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the claimant to be present at the taking of the said depositions, and to put interrogatories, if he or they might think fit. I further certify that on the second day of July, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by Robert H. McKibben, the libellant, and his counsel, George B. Hibbard, esq., and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up and directing the same with his own hand to the court for which the same were taken, and I certify that the same will be retained by me until I shall deposit the same with my own hand, sealed up and directed as aforesaid, in the post office at Buffalo, New York, the place where the said depositions were taken. And I do further cer-

tify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this second day of July, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-eighth.

GEO. GORHAM, *United States Commissioner,*
duly appointed by the Circuit Court of the United States,
for the Southern District of New York, in the Second Circuit.

72 Indorsed: Vol. 18, page 37. United States dist. court for the southern district of N. Y. R. H. McKibben *vs.* The St'b't C. Vanderbilt. Deposition on the part of the lib'l'nt, taken before Geo. Gorham, United States commissioner, on the 2 day of July, 1864. Filed the 7 day of July, 1864.

Commissioner's report.

73 District court of the United States for the southern district of New York.

ROBERT H. McKIBBEN
vs.
THE ST'BOAT C. VANDERBILT, HER TACKLE, &c.

In pursuance of a decretal order made in the above-entitled cause, on the 21st day of April, in the year of our Lord one thousand eight hundred and sixty-four, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for the damages by him sustained by reason of the collision in the pleadings mentioned, and to report thereon to this court with all convenient speed—

I, George F. Betts, the commissioner, to whom the matter was referred, do report that I have been attended by the proctor for the libellant, and have taken and examined the testimony offered in support of the libellant's claim, and do find that there is due to the libellant for the damages by him sustained by reason of the collision in the pleadings mentioned, the following sums, viz:

Damage to boat	$1,300 00	
Damage to cargo	5,195 00	
		$6,495 00
Int. on same from July 17, 1863		525 53
Making in the total		7,020 53

the sum of seven thousand and twenty dollars and fifty-three cents

Dated the 13th day of Sept., A. D. 1864. All which is respectfully submitted.

GEO. F. BETTS, *U. S. Commissioner.*

A. C. MORRIS, *Proctor for Libellant.*

74 Indorsed: Vol. 18, No. 37. United States district court for the southern district of New York. R. H. McKibben *vs.* The St'boat C. Vanderbilt, her tackle, &c. A. C. Morris, proctor for libel't. Commissioner's report, confm. nisi, 2 days. Filed 20 day of Sept. 1864.

75 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Thursday, the 22d day of Sept., in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Samuel R. Betts, district judge.

R. H. McKibben
vs.
The Steamboat C. Vanderbilt, her tackle, &c. } 18–37.

(The time to file exceptions to the commissioner's report in this cause having expired, and no exceptions having been filed)

On reading and filing the report of Geo. F. Betts, United States commissioner, to whom the above matter was referred, by which there is reported due the libellant for damages by collision in the pleadings mentioned, and the interest, of seven thousand and twenty $\frac{53}{100}$ dollars—

On motion of A. C. Morris, esq., proctor for the libellant, it is ordered that the report be in all things confirmed, and that the libellant recover in this action against the steamboat C. Vanderbilt, &c., the amount reported due, together with his costs to be taxed, and that said vessel, &c., be condemned thereupon.

And on like motion, it is further ordered that in pursuance of the act of Congress passed March 3d, 1847, a summary judgment be, and the same is hereby, entered against The New Jersey Steam Navigation Company, the principals, and David Hayward and Daniel Drew, the sureties, on their bond, given on the discharge of the property arrested, for the sum of fourteen thousand dollars, the amount of their said bond executed on discharging the said steamboat from custody.

And on like motion, it is further ordered that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, that the libellant have execution, to enforce satisfaction of this decree.

SAM'L R. BETTS.

A. C. Morris, *Proctor for the Libellant.*

76 Indorsed: Vol. , No. . United States district court for the southern district of New York. R. H. McKibben *vs.* The St'boat C. Vanderbilt, &c. A. C. Morris, proctor for libel't. Final decree in rem on confirmation of commissioner's report, and summary judgment on bond, under act of Congress, March 3d, 1847. Filed and entered the 22 day of Sept., 1864. Judg't docketed Sept. 22, 1864.

77 District court of the United States for the southern district of New York.

ROBERT H. McKIBBEN
vs.
THE STEAMBOAT C. VANDERBILT, the New Jersey Steam Navigation company, claimants.

SIR: Please to take notice that the claimants intend to appeal from the final decree of the court in this cause.

Dated Sept. 29, 1864.

Yours, &c.,

CHARLES JONES, *Proctor for Cl'm'ts.*

To GEO. F. BETTS, Esq., *Clerk.*
A. C. MORRIS, Esq., *Pr. for Libellants.*

Indorsed: District c't of the U. S. for the southern dist. of N. Y., 18–37. R. H. McKibben *v.* Steamboat C. Vanderbilt. Notice of appeal. Charles Jones, p'r for cl'm'ts. Filed Oct. 1st, 1864.

78 United States district court for the southern district of New York.

THE STEAMBOAT C. VANDERBILT, the New Jersey Steam Navigation Company, cl'm'ts and appellants,
v.
ROBERT H. McKIBBEN, lib'l'nt and appellee.

SIR: Please to take notice that the stipulation to be filed by the above-named appellant on the appeal made herein will be executed and given by Daniel Drew, of No. 41 Union Place, in the city of New York, broker, and John Englis, ship-builder, at the foot of 10th street in said city, and that the said sureties will attend at the office of the clerk of this court, on Saturday next, the 14th January inst., at 12 o'clock m., to execute said stipulation, and that they will at the same time and place justify as good and sufficient sureties herein.

Dated January 11th, 1864.

Yours, &c.,

CHAS. JONES, *P'r for Appellants.*

To A. C. MORRIS, Esq., *Proctor for appellee.*

79 Indorsed: 18–37. U. S. district court, southern dist. of N. Y. The Steamboat C. Vanderbilt, the N. J. S. N. Co., *v.* Robert H. McKibben. Notice of justification of sureties. Charles Jones, proctor for appellants.

I admit due service of a notice of which the within is a copy.

A. C. MORRIS, *Proctor for Libel'nt.*

Filed Jan'y 14, 1865.

80 Circuit court of the United States for the southern district of New York.

THE STEAMBOAT C. VANDERBILT, the New Jersey Steam Navigation Company, claimants and appellants,
ads.
ROBERT H. MCKIBBIN, libellant and appellee.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The petition and appeal of the above-named appellants respectfully showeth: That on or about the seventeenth day of July, in the year one thousand eight hundred and sixty-three, the above-named libellant, Robert H. McKibbin, filed his libel in the district court of the United States for the southern district of New York, against the steamboat C. Vanderbilt, her engine, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein, in a cause civil and maritime, of damage from collision, in which said libel it is in substance alleged, among other things, that
81 on the sixteenth day of May, in the year 1863, the canal boat Canisteo, of which the said libellant was owner, came into collision with the said steamboat C. Vanderbilt, and through the fault and negligence of the persons in charge of the said steamboat the said canal boat and her cargo were lost and destroyed, to the damage of six thousand four hundred and ninety-five dollars to the said libellant, and that in and by the said libel the libellant prayed that the district court would be pleased to pronounce for the damage aforesaid, and to condemn the said steamboat, her engine, machinery, &c., with costs; that process was issued against the said steamboat, and she was attached. And on or about the 28th day of August, in the year 1863, the New Jersey Steam Navigation Company, the claimants, having filed the necessary stipulations for costs and value, filed their claim and answer in the said district court, alleging among other things, in substance, that the said collision arose through the fault and negligence of the persons in charge of the said canal boat and the steam tug having her in tow, and without any fault on the part of the said steamboat C. Vanderbilt, and praying that
82 the said district court would be pleased to pronounce against the libel aforesaid, and to condemn the said libellant in costs; that thereafter the said cause came on to be tried and to be heard before the honorable Samuel R. Betts, judge of the district court for the southern district of New York, on the 23d day of February, 1864, and the trial thereof was continued and the cause was heard on the allegations and testimony and proof adduced by the respective parties on the 23d, and on the 24th and 25th days of February, 1864, and thereafter, on or about the 21st day of April, 1864, a decretal order was made by the said court, by which in substance it was decreed that the libellant recover against the said steamboat, her tackle, &c., the damages sustained by him by reason of the col-

lision aforesaid, and it was referred to a commissioner to ascertain and compute the amount of such damages; that George F. Betts, esquire, the commissioner, under and by virtue of the said decretal order, proceeded to take proofs in respect to the said damages, and on or about the 22d day of September, 1864, he reported in favor of the libellant for the sum of seven thousand and twenty dollars
83 and fifty-three cents, and that his report was confirmed; and on or about the 22d day of September, 1864, a final decree was entered in the said cause in favor of the libellant for the amount so reported, with costs.

And these appellants are advised and insist that the said decrees are erroneous, inasmuch as the said libellant was not entitled to recover any damages in the premises, and that these appellants were entitled to a decree dismissing the said libel with costs.

And these appellants, for these and other reasons, appeal from the whole of the said decree to the next circuit court, to be held in and for the said southern district of New York, and they pray that the said decree, with the proceedings and documents in said cause, may be sent to the said next circuit court, and on the said appeal they intend to have said cause heard anew on the pleadings and proofs in the district court and other proofs to be introduced in the said circuit court.

And these appellants pray that the said decree, and every part thereof, may be reversed with costs, or that such other decree be thereupon made as to the said circuit court shall seem just,
84 and that the said libellant be condemned to pay to these appellants their costs and damages in the premises.

CHARLES JONES,
Proctor for Cl'm'ts and App'l'ts.

I hereby admit due service of an appeal of which the foregoing is a copy.

A. C. MORRIS,
Proctor for Libellant.

Indorsed: Circuit court of the United States for the southern district of New York, 18–37. The Steamboat C. Vanderbilt, the New Jersey Steam Navigation Company, cl'm'ts and app'll'ts, *vs.* Robert H. McKibbin, libellant and appellee. Petition on appeal. Charles Jones, proctor for appellant. Filed Jan'y 14, 1865.

85 *Bond for costs and damages.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

ROBERT H. MCKIBBIN, lib'l'nt and appellee,
vs.
THE STEAMBOAT C. VANDERBILT, HER TACKLE, &c., the New Jersey Steam Navigation Company, cl'm'ts and appellants.

Know all men by these presents that we, Daniel Drew and John Englis, of the city of New York, are held and firmly bound unto the

above-named libellant and appellee, in the sum of fifteen thousand dollars, to be paid to the said libellant, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 14th day of January, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas the above-named claimants have prosecuted an appeal to the circuit court of the United States for the southern dist. of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

D. DREW. [L. S.]
JOHN ENGLIS. [L. S.]

Sealed and delivered and taken and acknowledged this 14 day of Jan'y, 1865, before me.

GEO. F. BETTS, *U. S. Com'r.*

86 UNITED STATES OF AMERICA,
Southern district of New York, ss:

Daniel Drew and John Englis, being duly sworn, each depose and say that he resides in the southern district of New York, and that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

D. DREW.
JOHN ENGLIS.

Sworn to this 14th day of Jan'y, A. D. 1861, before me.
GEO. F. BETTS, *U. S. Com'r.*

Indorsed: Vol. 18, page 37, U. S. circuit court. R. H. McKibbin, lib'l'nt and appellee, *vs.* The St'boat C. Vanderbilt, her tackle, &c. cl'm'ts and app'l'nts. Bond for costs and damages on appeal. Chas. Jones, app'l'nts' proctor. Filed this 20 day of Jan'y, 1865.

87 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Saturday, the 20th day of May, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

R. H. McKIBBEN, lib'l'nt and appellee,
vs.
THE ST'BOAT C. VANDERBILT, cl'm'ts and app'l'nts.

The appeal in this case coming on to be heard—
Mr. Nash reads testimony from the apostles, and is heard on the part of libellant.
Mr. Jones reads testimony from the apostles, and is heard on part of cl'm'ts and appellants.

88 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the 22 day of May, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

R. H. McKIBBEN, lib'l'nts,
v.
THE ST'BOAT C. VANDERBILT, cl'm'ts and appellants.

This cause being still on hearing—
Mr. Nash is heard in reply.
Cur. adv. vult.

89 At a term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the 7th day of September, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

ROBERT H. McKIBBEN, lib'l'nt and appellee,
v.
THE ST'BOAT C. VANDERBILT, HER TACKLE, &c., the New Jersey Steam Navigation Company, cl'm'ts and appellants.

This cause having been brought to a hearing on the appeal taken by the respondents from the district court herein, after hearing Mr. Jones for the appellants, and Mr. Morris for the libellants and appellee, and due deliberation having been had in the premises, it is ordered, adjudged, and decreed that the said decree so appealed from be, and the same is hereby, in all things affirmed, with costs of said appeal to be taxed, and that the libellants recover of the respondents the sum of seven thousand three hundred and ninety $\frac{80}{100}$ dollars, the amount of the said decree and costs in the district court, and four hundred and eighty-eight $\frac{55}{100}$ dollars interest thereon, from

90 the 23d day of September, 1864, as prescribed by said decree, together with eighty-six dollars and sixty cents costs of this appeal, amounting, in the whole, to seven thousand nine hundred and sixty-five $\frac{98}{100}$ dollars.

And on like motion, it is further ordered that unless an appeal be taken therefrom within the time prescribed by law, a summary judgment therefor be entered in favor of the libellant against the said claimant, and Daniel Drew and John Englis, his sureties, and that they have execution therefor.

S. NELSON.

Indorsed: U. S. circuit court. R. H. McKibben *v.* The Steamboat C. Vanderbilt, her tackle, &c. Decree. A. C. Morris, p. for lib'l'nt. Filed Sept. 7, '65.

91 Circuit court of the United States for the southern district of New York, in the 2d circuit.

THE STEAMBOAT C. VANDERBILT, HER TACKLE, &c., the New Jersey Steam Navigation Co., cl'm'ts and app'l'nts,
v.
ROBERT H. MCKIBBEN, lib'l'nt and appellee.

The appeal of the New Jersey Steam Navigation Company, the abovenamed claimants and appellants, respectfully showeth that on the seventeenth day of July, 1863, the abovenamed Robert H. McKibben filed his libel in the district court of the United States for the southern district of New York against the steamboat C. Vanderbilt, her tackle, apparel, &c., in a cause civil and maritime for the recovery of damages alleged to have been sustained by him to the canal boat Canisteo and her cargo by collision with the C.
92 Vanderbilt on the Hudson river, in the State of New York, and that the said steamboat was arrested upon process issued on said libel, and was discharged upon your petitioners intervening in said cause and filing their claim, and entering into stipulations; that your petitioners thereupon filed their answer to said libel, and such proceedings were had in the said cause that on the 22d day of Sept., 1864, a final decree was made and pronounced therein in the said district court, wherein it was in substance adjudged that the said libellant recover against the said steamboat, her tackle, &c., the sum of seven thousand and twenty dollars and fifty-three cents, together with costs.

And your petitioners further show that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court that
93 afterwards and on the 7th day of Sept., 1865, the said circuit court made a final decree in said cause whereby it was decreed that the said decree of the district court be in all things affirmed, with costs, and the said appellee have execution, and that the stipu-

lators cause their stipulations to be fulfilled, which said decree of the said circuit court is, as the appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court of the United States, and respectfully pray that the said decree of the said circuit court and the libel, answer, pleadings, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

94 Dated N. Y., Sept. 13, 1865.

D. DREW, *President.*

CHARLES JONES,
Proctor and Advocate for Appellants.

Indorsed: U. S. circuit court, S. D. of N. Y. The St'boat C. Vanderbilt, her tackle, &c., The New Jersey Steam Navigation Co., cl'm'ts and appellants, *vs.* Robert H. McKibben, libellant and appellee. Petition and appeal. Chas. Jones, proctor for cl'm'ts and app'l'nts.

I hereby admit due and personal service of the within petition and appeal on Robt. H. McKibben, libellant and appellee.

Dated Sept. 13, 1865.

A. C. MORRIS,
Proctor for Libellant and Appellee.

Filed Sept. 16, 1865.

95 *Bond for costs and damages.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE STEAMBOAT C. VANDERBILT, HER TACKLE, &c., the New Jersey Steam Navigation Company, cl'm'ts and appellants,
vs.
ROBERT H. MCKIBBEN, libellant and appellee.

Know all men by these presents that we, Daniel Drew and Martin E. Greene, are held and firmly bound unto the abovenamed libellant and appellee in the sum of eight thousand dollars, to be paid to the said libellant, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 13th day of Sept., in the year of our Lord one thousand eight hundred and sixty-five.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void ; otherwise, the same shall be and remain in full force and virtue.

D. DREW.
MARTIN E. GREENE.

Sealed and delivered, and taken and acknowledged, this 13 day of Sept., 1865, before me.

R. E. STILWELL, *U. S. Com'r.*

96 UNITED STATES OF AMERICA, *Southern district of New York, ss:*

Daniel Drew, of the city of New York, and Martin E. Greene, of New York city, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of sixteen thousand dollars over and above his just debts and liabilities.

D. DREW.
MARTIN E. GREENE.

Sworn to this 13 day of Sept., A. D. 1865, before me.
R. E. STILWELL, *U. S. Com'r.*

Indorsed : Vol. , page . U. S. circuit court. The St'boat C. Vanderbilt, her tackle, &c., the New Jersey Steam Navigation Co., cl'm'ts and app'l'nts, *vs.* Robert H. McKibben, libel'nt and appellee. Bond for costs and damages on appeal to Supreme Court U. S. Jones, proctor. Filed this 13 day of Sept., 1865.

I approve the within bond and the sufficiency of the sureties thereto. SAM. R. BETTS.

97 By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Robert H. McKibben :

Whereas the New Jersey Steam Navigation Company, claimants of the steamboat C. Vanderbilt, her tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Robert H. McKibben, against the said steamboat C. Vanderbilt, her tackle, &c., and have filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, on the first Monday of December next, to do and receive what may appertain to be done in the premises.

Given under my hand, at the city of New York, in the second circuit, the 14th day of September, in the year of our Lord 1865, and of the independance of the United States the ninetieth.

SAM'L R. BETTS.

98 Indorsed: U. S. circuit court. The Steamboat C. Vanderbilt, her tackle, &c., The New Jersey Steam Navigation Company, cl'm'ts and app'l'ts, *vs.* Robert H. McKibben, lib'l'nt and appellee. Citation. Chas. Jones, proctor for app'l'nts.

I hereby admit due and personal service of the within citation on Rob't H. McKibben, the libellant and appellee.

Dated Sept. 14th, 1865.

A. C. MORRIS,
Proctor for Libellant and Appellee.

Filed Sept. 16, 1865.

+

Wm. C. Bryant & Co., Printers, 41 Nassau Street. N. Y.

Supreme Court

OF THE UNITED STATES.

The Steamer *C. Vanderbilt*, her Tackle, &c.; The New Jersey Steam Navigation Company, Claimants,

Appellants,

vs.

Robert H. McKibbin,

Respondent.

Respondent's Brief.

The libel was filed in the District Court of the Southern District of New York, by the respondent, as owner of the canal boat *Canisteo*, against the steamer *C. Vanderbilt*, in a case of collision. (*Libel*, *p.* 1, *fols.* 2–5; *Answer*, *p.* 9, *fols.* 17–21).

The collision occurred on the Hudson river, between Albany and Troy, on the morning of the 16th May, 1863, and the *Canisteo* and her cargo were sunk.

The District Court held that the *C. Vanderbilt* was in fault, and decreed in favor of the libellant (*p.* 25, *fol.* 56); the damages were subsequently reported at $7,020 53 (*p.* 31, *fol.* 73), and no exceptions having been filed to the report (*p.* 32, *fol.* 75), a final decree was made on the 22d September, 1864. (*p.* 32, *fol.* 75).

From this decree, an appeal was taken to the Circuit

Court (*p.* 34, *fols.* 80–84), which was heard on the same testimony that had been taken in the District Court. (*p.* 37, *fols.* 87–8.)

The Circuit Court affirmed the decree of the District Court (*p.* 37, *fol.* 89) on the 7th September, 1865, and from this decree of affirmance the present appeal was taken. (*p.* 38, *fol.* 91.)

[The opinions delivered in the District and Circuit Courts are printed herewith.]

The question was mainly one of fact. The testimony on the part of the respondent (the libellant below) was that of Charles H. Hayner (*p.* 11, *fols.* 24, 28), William Ward (*p.* 13, *fols.* 28–31), Levi Van Aken (*p.* 15, *fols.* 31–33), Hiram G. Tyson (*p.* 16, *fols.* 33–4), Thomas Ward (*p.* 16, *fols.* 34–5), Phineas Ostrom (*p.* 17, *fol.* 36), and Hugh McKibbin (*p.* 18, *fol.* 37).

The testimony on the part of the appellants (claimants below) was that of Peter B. Shafer (*p.* 16, *fols.* 38–43), Thomas Powell (*p.* 20, *fols.* 43–45), Charles Brisnett (*p.* 2, *fols.* 45–6), Nathan H. Hayes (*p.* 22, *fols.* 47–8), Charles W. Farnham (*p.* 22, *fols.* 48–50), Daniel Lasher (*p.* 23, *fols.* 50–52), John Murphy, (*p.* 24, *fol.* 53), and Lansing Furger (*p.* 25, *fol.* 54).

Libellant's witness *Hayner* was re-called. *p.* 25, *fol.* 55).

The *Canister* left Troy early in the morning of the 16th May, in tow, with other boats, of the propeller *O. C. Hubbard*. The collision took place about a mile below the point from which the boats had started. The *C. Vanderbilt* was a passenger steamboat, of the largest class, and had left New York the evening before, on one of her regular trips to Troy, had landed her Albany passengers early in the morning, and was making for her berth, at Troy, which was on the easterly side of the river; but she was, at the time of the collision, at the extreme west, or left hand side, of the channel of the river. There was a dense fog at the time, and the *Vanderbilt* attempted to clear her-

self from responsibility by contending that the propeller and her tow should not have started down the river. (Answer, fol. 20.)

I.—The collision occurred in a bank or drift of fog, which spread suddenly across the river. When the *Hubbard* left Troy with the *Canisteo*, the weather was clear. The finding below, therefore, that she and her tow were not guilty of negligence in starting when they did, was correct.

The witnesses on the part of the *Vanderbilt*, concur that the weather was clear when they left Albany, and that the fog was a fog-bank. (The testimony of the pilot, (fols. 37, 39), and the wheelsman, (fols. 43, 45–6). (The lookout on the *Vanderbilt*, said the fog was "just beginning to settle there," (fol. 53), and Farnham, who from his boat at the wharf at Troy, saw the propeller on her way down, said "she was going directly into a bank of fog; it was rather clear above." (Fol. 48.)

The witnesses for libellant state that the weather had been foggy, but had lighted up, and they could all see across the river when they started, and the promise was of a fair day. If the fog had been general the *Vanderbilt* herself should not have started, but the testimony is all to the effect that the fog, which led to the collision, was a bank which suddenly stretched across the river just below Troy. The libellant left about six o'clock, at least an hour after sunrise, (May 16), and when the fog bank settled down upon them all hands used proper care and diligence in navigation.

II.—The tug, with her tow, was on the proper side of the channel; the right side going down; was going slowly, blowing her fog signals, as the fog settled down, and began to back at once as soon as the *Vanderbilt* was discovered.

In reference to whistles, both boats claimed to have blown whistles that the other boat did not hear. But there was no positive evidence that the *Hubbard's* whistles were not blown, and the testimony of the libellant's witnesses that they were must be taken as true. Their evidence, as to the slowing of the *Hubbard*, and the backing of her engine is not contradicted. Neither the *Hubbard*, therefore, nor the libellant's boat, the *Canisteo*, was in fault.

III.—The *Vanderbilt* could have avoided the collision by a fair degree of prudence and consideration for the rights of others, but she was near home, and did not much heed any trifling hindrance in reaching there.

According to all appellants' witnesses who were on the *Vanderbilt*, she was navigated that morning, *notwithstanding the heavy fog that layjust at the entrance of the Troy harbor*, precisely as she was on ordinary mornings. She was slowed a little, they say, at the bar, as she approached the lower side cut, not on account of the fog, but on account of the boats lying there. (*Fol.* 38.) She was on the extreme west side of the channel, just where she was likely to meet boats coming down, and so near the west bank as to be in full sight, notwithstanding the fog, of the boats moored there. She was where tows are frequent, and if she went on at all in the fog, it was her duty to go to the right, and proceed with extreme caution. She knew that boats coming down with the current could check their headway with difficulty, whereas she had a powerful engine, and could keep stationary, or back down with ease. She could not, under such circumstances, undertake to make a short cut to her berth, except at her peril. The pilot admitted that he could have gone to the right of the tug, if he had seen her, but to do so would have taken him a little out of his straight line towards his dock. (*Fols.* 40, 41.) This was not a valid excuse.

VI.—The rule of the river to go to the right (fol. 35,) was not disputed by the claimants. It is the admiralty rule and is in harmony with the State Law: "Whenever any steamboats shall meet each other on the waters of the Hudson River, &c., each boat so meeting shall go towards that side of the river or lake which is the starboard or right side of such boat, &c., (1 R. S., 683, § 1, marg. page) See *Newton v. Stebbins*, 10 *How.*, 586; *N. Y. & Balt. Tr. Co. v. Phil. & Sav. St. Nav. Co.*, 22 *How.* 461, 472.)

Being on the wrong side of the road is, at common law, in case of a sudden meeting or other surprise, evidence of negligence. *Chaplin* v. *Howes*, 3 *C. & P.* 554.

The *Vanderbilt* was not only on the wrong side, but running at too great speed considering the fog, and the settled rule in admiralty is, that vessels running through a thoroughfare, or into a harbor, in the night, or in a fog, will be held to extreme caution. *Ward* v. *Rossiter*, 1 *Newb.*, 225 6 *M. Lean.* 63; *The Europa*, 2 *Eng. L. & Eq.*, 557; *McCready vs. Goldsmith*, 18 *How.* 89.

The decree of the Circuit Court should be affirmed.

S. P. Nash,
Counsel for Respondent.

U. S. DISTRICT COURT:

IN ADMIRALTY.

ROBERT H. McKIBBEN.

vs.

THE STEAMER "C. VANDERBILT."

Copy of Decision

OF BETTS, J., *District Judge.*

The Court held that the differences between the witnesses are not inconsistent with their common liability.

That there is nothing to shake confidence in the testimony that signals were made from both vessels, but were not heard by those for whom they were intended.

That the evidence given in behalf of the libellant outweighs that opposing it, which imputes negligence and fault to the libellant's vessel in leaving port that morning. The evidence of eye-witnesses on the spot, uninterested in the tug or her tow, establishes that there was promise of a clear and fair day when the libellant's boat put off from the dock at Troy. It was after sunrise when she got under way. No fog was then present, but shortly afterwards the tug and the tow fell into the same dense fog bank into which the *Vanderbilt* came from below.

That no proper precaution was omitted on either vessel, in being under weigh that morning until they came into the fog bank. There was nothing observable outside which could justly deter either of them from prosecuting their voyage until they found themselves enshrouded in a fog.

That then a new condition of responsibilities in respect to both vessels had plainly occurred.

That neither steamer had succeeded in giving warning to the other of its approach or whereabouts by sounding its whistle. Not knowing that the endeavor to do so had been unsuccessful, each steamer was bound to act in pro-

tection of itself and others against impediments which might be encountered in the darkness (whether such apprehended obstacle might be met stationary or moving) by the careful use of precautions appropriate to navigation at night through narrow and crowded passages, and upon currents of unusual force or velocity.

That, though by the river's being swollen and the channel enlarged, a large latitude of discretion was permitted to vessels as to the line of channel upon which they could prudently anchor or proceed in either direction, still they must be presumed to mean to observe the usages of the river, and, as in the night time, so under other circumstances which might intercept a clear view of the course which was safe to be taken, must hold their position or headway as near to the main channel, and to that side of it as is required by custom.

That the familiar and common law rule governing the passing of vehicles meeting each other on the road or navigabl waters, is for each to keep off to the right.

That the weight of evidence is that the tug was correctly on the west side of the channel, and as close to the west shore as she could be prudently navigated at the time; and that the *Vanderbilt* had ample and safe passage-way in the channel, or between it and the east shore.

That accepting the case to be that both vessels were without fault, before they fell into the fog, it plainly became the duty of both not to advance further without securing their proper relative position in respect to other craft reasonably to be expected to be lying or moving ahead of them.

That in this respect the situation of the tug was unexceptionable; but the *Vanderbilt* was disproportionately out of the channel, toward the west shore.

That the *Vanderbilt* was wrong in continuing her headway off the track the law entitled her to take, unless from observation she had reason to believe it was open to her, which could not be so, on the facts of the case.

That the consequences of her attempting to advance outside of the channel, or middle of the river, while her course

was undiscoverable to the eye, was at her peril; and she must bear the consequences of the mistake.

Decree for libellant, with reference to ascertain the damages.

U. S. CIRCUIT COURT—2D CIRCUIT.

ROBERT H. MC KIBBEN,

vs.

THE STEAMER "C. VANDERBILT."

Copy Decision of NELSON, J.

The collision in this case occurred between the canal boat *Canisteo*, one of the tows in charge of the tug *O. C. Hubbard*, and the steamer *C Vanderbilt*, on the morning of the 16th May, 1863, on the west shore of the Hudson river, about opposite the arsenal at Troy. The tug had left with her tow that morning, starting from the upper side-cut at Troy, on the west side of the river, descending along the same one hundred and fifty or two hundred feet from the shore. The *Vanderbilt* was coming up the river on one of her usual trips, and making for the dock on the east side of the river. There had been a considerable freshet in the river, so that the water was some six or eight feet higher than at its usual rate. There was no difficulty, therefore, as to sea room for the steamers to pass to the right and east of the descending tow. Indeed, upon the proofs, even in an ordinary stage of water, the *Vanderbilt* could easily have passed to the right in going to her dock. Both vessels, however, were in a dense fog, at and before they discovered each other, and as it respects the navigation of each, under the circumstances in which they found themselves, very little, if any exception can be taken. The point pressing upon the steamer is, that she was too far to

the west of the channel of the river, and, therefore, out of her proper course. This view was taken by the Court below, and upon it a decree was rendered for the canal boat. We are inclined to concur in this result. The west side is the natural and ordinary track for descending vessels, and the *Vanderbilt*, we think, was bound to take notice of this fact, and to have kept nearer to the middle of the river. She had no right to act upon the idea that, the descending boat would take that course, and expect her to pass to the left or starboard, between her and the west shore. What makes the case more marked in this respect, is the fact that the steamer's dock was on the east shore, some mile above the place of collision.

Decree affirmed.

Supreme Court

OF THE UNITED STATES.

THE STEAMER "C. VANDERBILT," HER TACKLE, &c., THE NEW JERSEY STEAM NAVIGATION COMPANY,

Claimants and Appellants,

ads.

ROBERT H. McKIBBEN,

Libellant and Appellee.

Brief and Points for Appellants.

CHARLES JONES,
For Appellants.

S. P. NASH,
For Appellee.

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1868.

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty. N. Y.

Supreme Court

OF THE UNITED STATES.

The Steamer "C. Vanderbilt," &c., The New Jersey Steam Navigation Company,
Claimants and Appellants,
ads.
Robert H. McKibben,
Libellant and Appellee.

Brief and Points for Appellants.

Statement of Proceedings.

The libellant filed his libel on the 17th of July, 1863. (Fols. 1–5.)

The claimants and appellants filed their claim on the 20th of July, 1863. (Fols. 10, 11.)

The claimants, now appellants, filed their answer on the 28th of November, 1863. (Fol. 21.)

The cause was tried before the Honorable Judge Betts, in February, 1864 (fols. 24–55), and on the 21st of April, 1864, the said Judge made a decree against the said vessel with a reference to a commissioner to ascertain and compute the damages, &c. (Fol. 56, &c.)

The commissioner, under this decree, took proof in reference to damages, and the proof appears from fols 60–73, and thereupon he made his report, making the total of

damages, with interest, $7,020.53, on the 13th of September, 1864. (Fol. 73.)

The report of the commissioner was confirmed on the 22d of September, 1864, and the usual decree or judgment in favor of the libellants was entered accordingly.

The claimants, now appellants, appealed from this decree to the Circuit Court of the United States. (Fols. 77–86.)

The cause came on for trial at the Circuit Court, before Mr. Justice Nelson, at the May Circuit, 1865, and thereupon a decree was entered affirming the decree of the District Court, with costs. (Fols. 87–91.)

Thereupon, the claimants, now appellants, appealed to the Supreme Court from the last mentioned decree. (Fols. 91–98.)

Statement of Case—Pleadings.

The libel is filed on behalf of the owner of a canal boat called the *Canisteo*, and alleges, in substance, that when she was in tow of the *O. C. Hulbard*, which had also in tow other boats and was proceeding down the Hudson river from Troy, and nearly opposite the arsenal, at Troy, she was run into by the steamboat *C. Vanderbilt*, and with her cargo was sunk, and both cargo and vessel were lost. The particular grounds of complaint against the *C. Vanderbilt* are stated in the libel. (Fols. 1–4.)

The answer of the claimants and appellants denies all the material allegations in the libel, and sets forth the facts touching the collision, which it is claimed exonerate the *C. Vanderbilt* from all blame. (Fols. 17–21.)

First Point.—The fault charged upon the *C. Vanderbilt* is:

1. That she was running at an improper rate of speed, and in not stopping; and

2. In not going to the right of the tug and her tow.

These will be considered in their order.

First.—As to the speed of the *C. Vanderbilt*, and her not stopping.

(1.) The evidence on the part of libellants in respect to the speed of the *C. Vanderbilt* and the action of the steamboat after the vessels were seen each by the crew of the other. By the concurrent testimony of the libellants' witnesses, it appears that they did not see the *C. Vanderbilt* until she was within 200 or 300 feet of the tug and tow, that they did not see her wheels or walking-beam, and that there were no objects on shore by which they could measure the speed of the steamboat. If to this it be added, that the tug and her tow were running down with a curren of four or five miles an hour, it is evident that the witnesses, on the part of the libellants, were not in a position to form an accurate opinion as to the speed of the *C. Vanderbilt.*

(2.) The witnesses on the part of the claimants speak of what they knew and what they did. Their evidence is clear and positive, and being actors, the facts stated by them to have occurred, within their personal knowledge, are to be taken to be true.

The pilot, two wheelsmen and the engineer and assistants, all concur in fixing the speed of the *C. Vanderbilt* at not more than six miles an hour from Albany to Washington bar, then she was slowed, which reduced her speed one half; and afterwards, when made aware of the approach of the tug by the noise caused by the escape of steam, she was stopped; and when the tug and tow came in sight she was backed, and made from three to four revolutions of her engine back before the collision. These *facts* are proved by those who rang the bells in the pilot-house, and by those who obeyed them in the engine-room.

When to this it is added that the "*C. Vanderbilt*" was running against a current of four or five miles an hour, it

is quite apparent that she had little if any way on at the time of collision.

The rule for determining the credit to be given to the testimony of witnesses on different vessels is well stated in the case of

The Neptune, Olcott's R., p. 483, at pages 494–5, of the reports of the case.

It is no answer to this view of the case to say, that the character of the blow showed that the *C. Vanderbilt* was running at a high rate of speed, and was not stopped or backed, the same effect would have been produced if the *C. Vanderbilt* had been at anchor, and the tug and her tow had been coming down, even without any more way on than they had from the current. It is admitted that the tug could not back her tow against the current as then running, and she did not back until when within some 200 or 300 feet of the *C. Vanderbilt.*

Second Point.—As to the course or direction of the *C. Vanderbilt.*

1. The libellant's witnesses were not in a position to know and could not judge with any degree of accuracy the course she was on, or whether her course was changed. When they first saw her she was only 200 or 300 feet off, and there was a thick fog, so thick that neither shore was visible to the crews of the vessels. It was impossible for those in charge of the *Hubbard* therefore by looking at the shore to determine how the *C. Vanderbilt* was heading, or to form an opinion on the subject which was entitled to any credit or consideration.

2. It was clearly proved by those having charge of the wheel of the *C. Vanderbilt* and directing her movements, that she was on her usual track. She had crossed Washington

Bar about 250 feet to the eastward of propellers and other boats laying at the lower side cut, and was then steered by the compass N. N. E., which was the usual and proper course for her to take after crossing the bar.

Testimony of Shafer, the pilot; also testimony of wheelsmen and testimony of Captain Farnham.

(Fols. 37, 50.)

There was no change in her course after she crossed the bar, and straightened up the river up to the time of the collision.

3. There was nothing in the then state of the river, or of the navigation, which made it necessary for the *C. Vanderbilt*, to deviate from her usual course, and go further to the eastward. In consequence of the freshet, the river was navigable from shore to shore, and there was plenty of room for the *Hubbard*, and tow to the westward of the *C. Vanderbilt*. The *Hubbard* and her tow should not have been thrown in the usual and well known track of the *Vanderbilt*, when it was known that she was due at Troy, but they should have kept near the west shore.

4. The rule that steamers, when approaching each other, should pass to the right, does not apply to navigation in harbors, but the vessels entering and leaving are each bound to aid the other in avoiding a collision.

The *C. Vanderbilt* Abbott Ad. R., 361.

See pages 364-5

Third Point.—The propeller was at fault.

1. She had not sufficient power to navigate the tow, in the then state of the river.

There had been a great freshet, raising the river from 7 to 9 feet, and there was a current of from 4 to 5 miles an

hour, running down the river. She could not back her tow against the current, and had not sufficient power, even to tow her boats against the current. This is the testimony of all the witnesses.

It is submitted that, under these circumstances, she had no right to float down the stream, compelling other vessels to get out of the way, and not having the ability to aid them in so doing.

2. It was especially unsafe for the propeller to leave her berth in the then state of the weather. By the concurrent testimony of all the witnesses, it was a foggy morning, and the weather unsettled.

The libellant's witnesses say the fog had been heavy, but had lifted up at about the time the propeller left, and afterwards it became thicker. It must have been quite foggy, as the pilot of the propeller had been blowing the whistle some time before the collision.

The claimants' witnesses say that they could not see either shore, after crossing Washington Bar, and the fact that the vessels were not seen by the officers of each until they were within 200 or 300 feet, shows that there must have been a dense fog up the river, above Washington Bar.

Capt. Noyes and Capt. Farnham, both swear that it was unsafe for the propeller to leave when she did.

3. As the weather then was the propeller should have kept nearer the west shore, to be out of the way of vessels going up the river, and this, especially, when they knew that it was about the time of the arrival of the *C. Vanderbilt*, and that they would meet her.

Fourth Point.—The rule contended for by the libellant would make steamboats, like the *C. Vanderbilt*, insurers of the safety of all other vessels navigating the river.

No such rule exists. All vessels are to be navigated with care, and are chargeable for negligence only.

It is submitted that, on the facts proved in this case, the *C. Vanderbilt* did everything it was proper for her to do. She had proceeded on her voyage from New York with clear weather, until she arrived at Washington Bar, within about a mile of her dock; then proceeding, slowed on her usual course, she heard the escape of steam from another vessel, and immediately stopped, and, as soon as the other vessel was seen, backed and continued backing, until the collision. What more could she have done?

Fifth Point.—In the worst view of the case for the claimants, it was a collision between two vessels running in a fog, and is within the rule laid down in the case of the *Sylph*, U. S. Circuit. (manuscript) Southern District of New York

The rule should be more strictly enforced against a vessel leaving than one entering port. The *Vanderbilt* was near her dock when she first encountered the fog, and had a right to proceed cautiously, not expecting that any vessels would leave in the fog; she was not called upon to anchor, and, if she had anchored, the libellants would have sustained as much damage by running against her.

Sixth Point.—The decree should be reversed, with costs.

CHARLES JONES,
For Appellants.